

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

AURELIO LOPEZ NUNEZ	§	
v.	§	CIVIL ACTION NO. 6:06cv338
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING INITIAL REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

The Petitioner Aurelio Nunez, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On August 14, 2006, the Magistrate Judge issued a Report recommending that Nunez's motion for leave to proceed *in forma pauperis* be denied and that Nunez be required to pay the filing fee of \$5.00. Nunez received a copy of this Report on August 17, 2006, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and records in this cause, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Petitioner's application for leave to proceed *in forma pauperis*, filed July 31, 2006 (docket no. 2) is DENIED. It is further

ORDERED that the Petitioner shall have 30 days from the date of entry of this order in which to pay the sum of \$5.00. Failure to comply with this order or to show good cause for such failure could result in the dismissal of this petition, with or without prejudice, for failure to prosecute or to obey an order of the Court. Rule 41(b), Fed. R. Civ. P.

So ORDERED and SIGNED this 19th day of September, 2006.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**